

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 3487/2018

Kajor Mal Sharma, son of Shri Ramdhan Sharma, R/o Plot No. 18-A, Surya City, Tilak Hospital Ke Peeche, Paldi Meena, Agra Road, Jaipur.

-----Petitioner

Versus

1. The State of Rajasthan through its Secretary Forest Department, Government of Rajasthan, Secretariat, Jaipur.
2. The Principal Chief Conservator of Forest, Government of Rajasthan, Van Bhawan, Jaipur.

-----Respondents

Connected With

S.B. Civil Writ Petition No. 7501/2017

Pushpendra Singh Katela, son of Shri Karan Singh Katela, 1-L-9, Housing Board, STC Colony, RIICO Road, Bharatpur.

-----Petitioner

Versus

1. The State of Rajasthan through its Secretary, Forest Department, Government of Rajasthan, Secretariat, Jaipur.
2. The Principal Chief Conservator of Forest, Government of Rajasthan, Van Bhawan, Jaipur.

-----Respondents

For Petitioner(s)	:	Mr. Sandeep Saxena Ms. Neha Swami Mr. Bhuvnesh Tiwari
For Respondent(s)	:	Mr. Rahul Lodha, AGC with Mr. Munendra Singh Fouzdar

JUSTICE ANOOP KUMAR DHAND

Order

11/02/2025

1. Since the common question of law and facts are involved in these petitions, hence with the consent of both the parties, both these matters are taken up together and are decided by this common order and for the sake of convenience, the facts pleaded in **S.B. Civil Writ Petition No.7501/2017** titled as **Pushpendra Singh Katela vs. The State of Rajasthan & Anr.** and the prayer mentioned therein is taken into consideration, the instant writ petition has been preferred with the following prayer:-

"It is therefore, most respectfully prayed that your Lordship may graciously be please to allow the writ petition and further be please to call the entire record of the case and after examining the same by an appropriate writ order or direction the order dated 22.11.2016 may kindly be modified and the petitioner held entitled for the all consequential benefits for the intervening period from 19.06.2000 to 19.05.2004 and arbitrary conditions mentioned in the order dated 18.05.2004 including treating the intervening period from 19.06.2000 to 19.05.2004 as dies-non may kindly be declared illegal and arbitrary and same may kindly be quashed and set aside and respondents be directed to grant for the intervening period full financial and service benefits along with all consequential benefits to the petitioner along with interest.

Any other order which this Hon'ble Court deemed fit in the circumstances of the case may kindly be passed in favour of petitioner.

If any prejudicial order to the interest of the petitioner is passed during the pendency of the writ petition, same may kindly be taken on record and be pleased to quashed and set aside."

2. Learned counsel for the petitioner submits that the petitioner was given compulsory retirement with effect from 19.06.2000 in terms of the notification dated 05.07.2000. Counsel submits that prior to the aforesaid notification, the qualifying service for passing the order of compulsory retirement was 25 years and after enforcement of the aforesaid notification dated 05.07.2000, the qualifying period of 25 years was reduced to 15 years. Counsel submits that this fact is not in dispute that the petitioner has not

completed 25 years of service, hence, under these circumstances, the order of compulsory retirement should not have been passed by the respondents.

3. Counsel submits that subsequently the mistake was realized by the State and the compulsory retirement order of the petitioner was withdrawn by the respondents and the petitioner was reinstated back in service on 18.05.2004.

4. Counsel submits that while taking the petitioner back in service, subsequently, an order was passed on 22.11.2016 and the period commencing from 19.06.2000 till 18.05.2004 was treated as 'dies-non'. Counsel submits that there was no fault of the petitioner, and he never denied to work in the intervening period and the fault lies with the State Authorities as they did not allow the petitioner to work in the intervening period. Counsel submits that under these circumstances, the intervening period could not be treated as dies-non.

5. In support of his contentions he has placed reliance upon the following orders passed by the Co-ordinate Benches of this Court
(i) **Jaswant Singh Tanwar vs. State of Rajasthan & Anr.; S.B. Civil Writ Petition No.7283/2005 decided on 22.02.2017** (ii) **Jagdish Narain Pandey vs. The State of Rajasthan; S.B. Civil Writ Petition No. 3246/2002** reported in **2017(1) WLC (Raj.) UC 121** and **Amarjeet Singh vs. State of Rajasthan & Anr.; S.B. Civil Writ Petition No.4557/2009 decided on 02.03.2016.**

6. Counsel submits that before taking the petitioner back in service and before his reinstatement, a forceful undertaking was taken from him, for not claiming the benefit of the intervening

period including the wages. Counsel submits that the petitioner was left with no other option except to submit the aforesaid undertaking and the same cannot be read against the petitioner. Hence, under these circumstances, interference of this Court is warranted.

7. Per contra, learned counsel for the respondent-State opposed the arguments raised by counsel for the petitioner and submitted that a mistake was committed at the instance of the State Authorities, while passing the order of compulsory retirement of the petitioner on 20.05.2000 and the petitioner has not completed the requisite period, as desired under Rule 53(i) of the Rules of Rajasthan Civil Services (Pension) Rules, 1996. Counsel submits that subsequently, the aforesaid order was revoked and the petitioner was reinstated back in service.

8. Counsel submits that prior to passing of the reinstatement order of the petitioner, an undertaking was submitted by him that he will not claim any benefit for the intervening period with effect from 19.06.2000 till 18.05.2004. Counsel submits that now the petitioner is bound by his own undertaking and he is not entitled to claim any benefit of the aforesaid intervening period. Counsel submits that under these circumstances, the intervening period of petitioner was treated as dies-non, while passing the impugned order dated 23.07.2003. Counsel submits that the same controversy came up for consideration before the Division Bench of this Court in the case of **Sudhindra Kumar Mishra Vs. State of Rajasthan; D.B. Civil Special Appeal (Writ) No.457/2014**. Counsel submits that the Division Bench of this Court vide order dated 07.01.2015 has taken a stand that if voluntary undertaking

is furnished by an employee and in consequence thereof, he has acted upon the same then, he is not entitled to revert back from the said undertaking and such person is not entitled to claim salary for the intervening period on the principal of 'No Work No Pay'. Hence, under these circumstances, interference of this Court is not warranted.

9. Heard and considered the submissions made at Bar and perused the material available on the record

10. This fact is not disputed by either side that the order of compulsory retirement of the petitioner was passed on 20.05.2000 and subsequently the same was withdrawn by the order dated 18.05.2004. This fact is also not in dispute that before passing of the aforesaid order, an undertaking was submitted by the petitioner for not claiming any wages/salary of the aforesaid intervening period.

11. Now, the real question which remains for consideration of this Court is that whether the intervening period of the petitioner can be treated as dies-non, on the basis of the undertaking submitted by the petitioner. This fact is not in dispute that the Co-ordinate Benches of this Court in the case of **Jaswant Singh Tanwar (supra)**, **Jagdish Narain Pandey (supra)** & **Amarjeet Singh (supra)** has held that an employee cannot be made sufferer for the fault of the State Authorities and if such person has been reinstated to work, then certainly, he is entitled to get wages/salary for the said period. It appears that in all these matters, the judgment passed by the Division Bench of this Court in the case of **Sudhindra Kumar Mishra (supra)**, was not brought into the notice and knowledge of the Co-ordinate Benches

of this Court, and thus, the orders in all the above matters have been passed in ignorance of the view taken by the Division Bench of this Court in the case of **Sudhindra Kumar Mishra (supra)**. In the aforesaid matter, the Division Bench of this Court has categorically held that if voluntary undertaking is furnished by an employee and in consequence thereof, he has acted upon the same, and once the same has been considered on merits and acted upon followed by his reinstatement in service, he cannot be allowed/permitted to resile therefrom and claim wages/salary for the intervening period on the principle of 'No Work No Pay'. The relevant portion of the judgment i.e. in Para 8 & 9 reads as under:-

"8. In our considered view, the ratio of the aforesaid judgments of the Apex Court relied upon is not applicable for the reason that the matter has been adjudicated by the court of law and after due adjudication, passed order to grant benefits of the intervening period. In the instant case, the impugned order has been passed by the Grievance Committee on the basis of the voluntary undertaking furnished by the appellant and in consequence thereof had acted upon and once that was considered on merit and acted upon followed by his reinstatement in service vide order dated 08.07.2004, the appellant cannot now be permitted to resile therefrom and to claim wages/salary for the intervening period on the principles of 'no work no pay'.

9. We do not find any fault in the decision making process adopted by the respondents and taking a decision of withholding the salary/wages for the intervening period on the principles of 'no work no pay' for which, an undertaking had already been furnished by him along with 17 officers."

12. Since the controversy involved in this petition has already been set at rest by the Division Bench of this Court in the case of **Sudhindra Kumar Mishra (supra)**, this Court finds no valid reason to take a different view. Accordingly, the instant writ petition stands dismissed.

13. Stay applications as well as all pending application(s), if any, also stand dismissed.

(ANOOP KUMAR DHAND),J

Garima/61-62